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BEFORE THE ARIZONA CORPORAT

IN THE MATTER OF:

TRI-CORE COMPANIES, LLC an Arizona
limited liability company, et al.,

Respondents.

DOCKET NO.
S-20867A-12-0459

At: Phoenix, Arizona

Date: October 23, 2013

Filed: **NOV 12 2013**

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AZ CORP COMMISSION
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME III

(Pages 371 through 394, inclusive.)

Arizona Corporation Commission

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INDEX TO EXAMINATIONS

2

WITNESSES

PAGE

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NONE

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INDEX TO EXHIBITS

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NO.

DESCRIPTION

IDENTIFIED

ADMITTED

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NONE

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 2 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 10:02 a.m., on the 23rd of
6 October, 2013.

7

8

BEFORE: MARC E. STERN, Administrative Law Judge
9

10 APPEARANCES:

11 For the Arizona Corporation Commission, Securities
12 Division:

Ms. Stacy Luedtke
13 Staff Attorney, Securities Division
1300 West Washington Street
14 Phoenix, Arizona 85007

15 For Tri-Core Companies, LLC, Tri-Core Business
16 Development, LLC, ERC Compactors, LLC, ERC Investments,
LLC, and Jason Todd Mogler:

17 THRASHER JEMSEK
By Mr. Bobby O. Thrasher, Jr.
18 530 East McDowell Road, Suite 107-495
Phoenix, Arizona 85004

19

For C&D Construction Services, Inc.:

20

THE RYCRAFT LAW FIRM, PLLC
21 By Mr. Dale B. Rycraft, Jr. (starting at page 390)
238 West 2nd Street
22 Mesa, Arizona 85201

23

24

25

KAREN L. KESSLER, RPR
Certified Reporter
Certificate No. 50821

1 ALJ STERN: We're back on the record in the
2 matter of Tri-Core Companies, et al., in Docket
3 No. S-20867A-12-0459.

4 We'll take appearances at this time. And on
5 behalf of the Securities Division.

6 MS. LUEDTKE: Stacy Luedtke.

7 ALJ STERN: Okay. On behalf of Tri-Core
8 entities and Mr. Mogler.

9 MR. THRASHER: Yes, Judge, it's Bobby Thrasher.

10 ALJ STERN: And Mr. Rycraft isn't here.

11 MR. THRASHER: He's not here yet, Judge.

12 ALJ STERN: Is he coming in, do you know?

13 MR. THRASHER: I think he is.

14 Judge, we had an issue come up last night. And
15 I talked to counsel about it, and I need to address it
16 with the Court.

17 So two of the respondents are ERC Compactors and
18 ERC Investments.

19 ALJ STERN: Uh-huh.

20 MR. THRASHER: Mr. Mogler was the shareholder in
21 those companies, and those were sold back in March 2013
22 to Guy Quinn.

23 ALJ STERN: To who?

24 MR. THRASHER: Guy Quinn. He's a separate
25 individual. And I have got a copy -- may I approach --

1 of the purchase contract, and I have provided it to
2 counsel. There are representations in the purchase
3 contract about this litigation. Unfortunately, I have
4 never had any contact with Guy Quinn with regard to this
5 litigation. I don't -- and I made representations
6 during day one that we were representing ERC Compactors,
7 ERC Investments -- I don't have a fee agreement with
8 them, Judge. I don't represent them. I think there is
9 a clear conflict of interest. There has been no
10 prejudice up to this point. I fear if we move forward
11 right now there is going to be prejudice. I have
12 reviewed the ER rules with regard to this, and I have
13 significant concerns about moving forward.

14 My request would be -- and I apologize to
15 counsel and I apologize to Your Honor -- that we move
16 the rest of the proceeding until -- and I have got
17 Mr. Quinn available to speak with counsel and the
18 Court -- move the rest of the proceeding to February so
19 Mr. Quinn can consult counsel. And it may be -- and
20 candidly, Judge, I'm uncertain whether or not it is even
21 a waivable conflict. Here is the issue.

22 ERC Investments and ERC Compactors could be
23 liable for, I think, upwards of a million and a half
24 dollars in restitution, plus fines and penalties that
25 Mr. Quinn, at this point, while there was

1 representations to contract, has no, and has not been
2 involved with. All of these -- and I don't think he has
3 personal liability -- all of these acts occurred prior
4 to his ownership.

5 But, Judge, I think we need to put a hold on
6 things until we can get him counsel and this can be
7 taken care of. And, again, my apologies -- let me tell
8 you how this came up.

9 This came up last night when we were preparing a
10 fee, or excuse me, not a fee, a waiver agreement for
11 Mr. Sherman. And when I'm looking at the signature
12 blocks, at that point -- because I didn't do the
13 purchase contract, Judge. The parties did the purchase
14 contract. And as we were researching it, at that point
15 a light came on that this was transferred, and, and I
16 never filed a withdrawal and I was never contacted by
17 him. He's got no notice of this.

18 We -- Judge, we've got a real problem.

19 ALJ STERN: Who's -- what is his name?

20 MR. THRASHER: Guy Quinn is his name.

21 ALJ STERN: He's the --

22 MR. THRASHER: He's the current sole shareholder
23 of ERC Investments and ERC Compactors. He acquired
24 them -- and these are collateral, or smaller entities.
25 Unfortunately, this is so incestuous. There were so

1 many entities that it was part of ERC Nevada that was
2 sold, which is the ERC company in Nevada that does the
3 recycling.

4 ALJ STERN: When was this sold?

5 MR. THRASHER: March of 2013. And, Judge, there
6 was companion litigation with Mr. Rycraft's client and,
7 candidly, that was the focus of everything, and we were
8 working to resolve that, which has been resolved. This
9 just --

10 ALJ STERN: Mr. Rycraft's --

11 MR. THRASHER: It got missed.

12 ALJ STERN: -- C&D, right?

13 MR. THRASHER: C&D, yes.

14 ALJ STERN: Weren't they bought out, correct me
15 if I'm wrong --

16 MR. THRASHER: By ERC.

17 ALJ STERN: That was -- when was that?

18 MS. LUEDTKE: That was part of the litigation.

19 ALJ STERN: Oh, that's part of this. Okay.

20 MS. LUEDTKE: No, not part --

21 MR. THRASHER: Part of the prior litigation.

22 MS. LUEDTKE: They sued each other.

23 MR. THRASHER: There was a dispute, and
24 essentially there was a walkaway after umpteen months of
25 litigation.

1 Judge, I just have real concerns. I think we
2 have a clear conflict of interest. I don't think I can
3 proceed. Again, I apologize to counsel and Your Honor.
4 This has never happened to me. And, you know, I just, I
5 don't have any other explanation than what I have just
6 given.

7 ALJ STERN: And ERC has been in this case from
8 the beginning.

9 Was the Division aware they were sold?

10 MS. LUEDTKE: We -- he just sent me this. And
11 my, my issue is -- and, you know, maybe we do need to
12 get Mr. Quinn on the phone. But Mr. Thrasher has been
13 attorney of record for these two entities on, you know,
14 a publicly available docket as of, you know, I believe
15 when the parties were negotiating this. And it says in
16 this that Mr. Quinn essentially was able to review
17 everything that he wanted to review and that he was
18 accepting, all contracts were assigned to him. Which I
19 would assume would be the retainer agreement that ERC
20 has, because, I mean, it is Mr. Quinn, but it's the ERC
21 entities that retained Mr. Thrasher. So I assumed that
22 those contracts are assigned.

23 Now, you know, I understand where counsel is
24 coming from. I'm a little disappointed, because he did
25 tell me he had reviewed drafts of these when it was

1 going on, so this is not something that he and his
2 client should be bringing up in the middle of hearing.
3 But I think this is something that Mr. Quinn should
4 probably weigh in on, mainly because there's also a
5 paragraph that all the managers, the sellers, were
6 indemnifying, essentially, Mr. Quinn for everything. So
7 I would assume that maybe Mr. Quinn is just going to
8 say, I'm being indemnified anyway for anything that
9 happens here, you do the representation. But I don't
10 know because I haven't spoken with Mr. Quinn about this.

11 ALJ STERN: Is Mr. Quinn an attorney or just
12 the --

13 MS. LUEDTKE: No. He's a gentleman in Chicago.

14 ALJ STERN: He probably needs to have an
15 attorney look at this issue. Now, I'm looking at page
16 eight of this agreement, and there are representations
17 concerning pending litigation proceedings. I haven't
18 really looked at it in depth to take a look.

19 MS. LUEDTKE: Yeah. There are some on the first
20 page in the last whereas paragraph. And I just did a
21 cursory review of this this morning. I'm sorry. I had
22 never reviewed it in detail, but --

23 And then, I don't know, Bobby, maybe you can
24 weigh in on this. What are these extra pages at the end
25 where --

1 MR. THRASHER: Those are the signature pages. I
2 wanted to give you a complete document with the
3 contract. I didn't want to insert signature pages into
4 the document. So what you have is how I received it. I
5 received a contract and then I separately received
6 signature pages.

7 And, you know, Judge, I'll just -- I understand
8 counsel's problem, and I get it. I would be frustrated
9 as well. Again, my concern is the prejudice in moving
10 forward far outweighs any prejudice by just putting a
11 hold on this for right now, allowing Mr. Quinn to get
12 counsel. When he assumes contracts, I think it's a
13 stretch to say he assumes a fee agreement, a special
14 contract between a party, you know, between an attorney
15 and his client. I just, I think that that's just not
16 true. I mean, I'm the attorney and I'm saying I don't
17 think I represent him. I think that that speaks
18 volumes.

19 Mr. Quinn is available. I told him that I was
20 going to have this discussion with Your Honor and
21 counsel, and I have got his phone number. He's -- and
22 what I suggested to him, and what is exactly what I
23 propose to the Court is that we move this to February,
24 that he gets an attorney, and they work this out. And
25 if it turns out that I'm going to represent all parties,

1 fine. I don't know that that's the case. At this point
2 it may be that I'm disqualified entirely because I have
3 represented -- there could be a nonwaivable conflict.
4 But I think there are so many issues that to move
5 forward, Judge, it just doesn't make sense.

6 ALJ STERN: I think what I want to do is take a
7 few minutes and take a look at this agreement. But why
8 don't we, we'll take a recess till 10:30, and I'll come
9 back at that time and give you my thoughts on where we
10 are. And again, this entity, ERC of Chicago, is a
11 purchaser of the stock of ERC Nevada. Is that what
12 happened? And ERC --

13 MR. THRASHER: The main entity was ERC Nevada.
14 That's the main recycling entity.

15 ALJ STERN: And then there's ERC Compactors --

16 MR. THRASHER: And ERC Compactors basically held
17 notes from investors and had security and equipment, so
18 that was thrown in there, as was ERC Investments.
19 Candidly, that's one of the reasons, you know, it just
20 wasn't on the radar, you know.

21 ALJ STERN: And ERC Investments -- and under the
22 terms, then, of this purchase contract, I'm assuming,
23 other than the advisement of the purchaser, is there an
24 assumption of the liabilities, which would be the notes
25 to investor, or lenders to those entities?

1 MR. THRASHER: There is an, in fact, Judge,
2 there is an assumption, and those notes were assumed,
3 and I wasn't involved in the process for the assumption,
4 but I think they were assumed and possibly even
5 renegotiated as part of a separate settlement agreement,
6 which I did provide to counsel. And, again, which I
7 wasn't involved in the mechanics of that. I was part
8 of, obviously, drafting the settlement agreement, but
9 none of the renegotiation. So this is convoluted and
10 involved and needs to be sorted out, Your Honor.

11 ALJ STERN: Probably.

12 Let's take the recess for a few minutes, and
13 I'll be back.

14 MR. THRASHER: Thank you.

15 (Recess taken from 10:14 a.m. to 10:28 a.m.)

16 ALJ STERN: We're back on the record after I had
17 a chance to try and sort this out. This one has more
18 heads than anything I have ever seen. Okay.

19 So this all pretty much hit the fan last night
20 when you were working on the waiver for this Mr. Sherman
21 individual who was supposed to be a witness for the
22 Division that you previously had represented?

23 MR. THRASHER: Yes, Your Honor.

24 ALJ STERN: Okay. I think what we're going to
25 do is do what you want. I don't need to hear from

1 Mr. Quinn if you're avowing -- and it certainly looks
2 like there was a purchase of those entities, and there
3 are some problems.

4 The Division, under the circumstances, you more
5 or less are just aware of most of this now.

6 MS. LUEDTKE: Yes, Your Honor. I mean, we
7 didn't know about any of it. My only issue with, you
8 know, if we are going to continue this is to get
9 Mr. Quinn on the phone, because we served the entity
10 which is all we could do. We didn't know about any of
11 this. But if this issue is Mr. Quinn's issue now, I'd
12 like to get him on the phone and find out what he -- we
13 haven't had any contact with him. I don't want to
14 direct him what to do, but I want to make sure that it's
15 on the record that he knows that these proceedings are
16 taking place and that they will start up again in
17 February.

18 ALJ STERN: Well, here's the thing.
19 Mr. Thrasher can't represent these entities. He has a
20 real problem. Mr. Quinn, I would assume --

21 When did you talk to him for the first time?
22 Yesterday?

23 MR. THRASHER: Last night. I mean, I had talked
24 to him prior because I was involved in that litigation
25 with ERC Nevada, but we have never had a conversation

1 about the ACC matter.

2 ALJ STERN: Right. You weren't involved in
3 drafting up anything with the sale, right?

4 MR. THRASHER: I had a brief review of it. That
5 was it.

6 ALJ STERN: Well, I would assume Mr. Quinn will
7 have to seek counsel.

8 MR. THRASHER: We'll give counsel all of his
9 contact information. If you'd like, we can do a
10 telephone conference. Whatever you prefer --

11 MS. LUEDTKE: My only issue is I don't want to
12 come back here in February and, you know, Mr. Quinn say
13 I still didn't know anything. And I don't want to give
14 him legal advice --

15 ALJ STERN: I'm assuming that in the interim,
16 the Division would then serve Mr. Quinn and/or his
17 counsel in Illinois and, I would assume, in Arizona.

18 MS. LUEDTKE: I don't know why we would have to
19 re-serve.

20 ALJ STERN: Yeah. Well, you know, when you have
21 something with as many different -- one, two -- I don't
22 know how many names are on this notice, but there's
23 quite a few. Without sitting and counting at least,
24 one, two, three, four, five --

25 MR. THRASHER: Judge, if counsel would, if she

1 would like, I mean, we can set a status conference in
2 30 days, and Mr. Quinn and his new counsel can attend.
3 I mean, I'm comfortable doing whatever. I'm just
4 uncomfortable proceeding at this point.

5 ALJ STERN: Well, you know you have a hard time
6 proceeding --

7 MR. THRASHER: I can't.

8 ALJ STERN: -- with entities who haven't really
9 been, they were served, but at the time, once upon the
10 sale of the entities -- and it's clear there was an
11 advice to Mr. Quinn of this, or this entity, it isn't --
12 Quinn didn't buy this personally. Apparently he
13 controls a company in Chicago that was the purchaser
14 here, according to the terms of the agreement, ERC of
15 Chicago, LLC. So there's that issue there. And then
16 the other issue is, well, on page eight of this
17 agreement it's saying that everything is pretty well
18 resolved with respect to C&D Construction, which is a
19 respondent in this proceeding.

20 And then also it's represented on page eight
21 that, apparently, the Commission's matter is sort of
22 resolved. Which I don't think at the time this
23 agreement was executed, wherever the date is, in March
24 of this year, I guess, the 8th of March, the matter
25 hadn't been resolved because we're sitting here now and

1 it still seems to be October 2013. So there's some real
2 problems. I don't know.

3 How do you reach -- we can reach Mr. Quinn, for
4 whatever it's worth, but I don't necessarily think
5 that's going to solve the problem because the Division
6 is going to have to take a look at this and somehow,
7 someday maybe make an amendment. I don't know whether
8 you amend it, or you serve this matter on the parent of
9 the existing respondents now. I'm not sure how you go
10 about it.

11 MS. LUEDTKE: Well, ERC Compactors and ERC
12 Investments have both been served and appeared in the
13 matter, filed answers. So it would be my understanding
14 that if -- and I would assume this is an oral motion to
15 withdraw by Mr. Thrasher, but I don't know -- but I'm
16 unsure why we would have to go through the -- and if the
17 Court is directing us to do so, that's fine but --

18 ALJ STERN: Well, I'm not sure if you have to
19 either.

20 MS. LUEDTKE: I mean, it's an entity. And I
21 understand that that's now Mr. Quinn, but we did serve
22 the entity. They did file an answer. You know, if
23 Mr. Quinn wants to amend that answer, I understand that.
24 That's why I think we should get him on the phone and
25 let him know that these, make sure -- I know

1 Mr. Thrasher spoke with him.

2 ALJ STERN: Well, here's the situation. I
3 suspect there may end up being some additional
4 litigation involved here, based on what I read on page
5 eight. It was clear in March of this year this matter
6 hadn't been resolved yet, I think, that's why you're
7 here now. And I assume -- we can talk to Mr. Quinn all
8 we want, but Mr. Quinn is going to have to talk to,
9 probably, Illinois attorneys and the Arizona attorneys.

10 MS. LUEDTKE: I don't doubt that, Your Honor. I
11 don't doubt that he is going to be able to give us any
12 definitive answers today. I just want to make sure that
13 he's aware of what's going on.

14 ALJ STERN: Mr. Thrasher, do you have a phone
15 number for this gentleman, Mr. Quinn?

16 MR. THRASHER: I do, Your Honor. And I agree
17 with counsel. I'm not certain that that entity would
18 have to file another answer. I think the more important
19 issue would be that, and he is, that he's aware of it
20 and now is actively participating in it, to the extent
21 he chooses. And I'm assuming he's going to be very
22 proactive.

23 ALJ STERN: Well, if you owned some companies
24 that are facing possible orders for X number of dollars,
25 more than pocket change, let's say --

1 MR. THRASHER: Yes, Your Honor.

2 ALJ STERN: -- you might want to -- and assuming
3 they're going entities, then you might want to do
4 something.

5 The other problem is, is we've already had a
6 couple days of hearing, and assuming Mr. Quinn wants
7 into this proceeding or maybe it should be -- I don't
8 know. But like I say, I foresee some more litigation
9 beyond this proceeding.

10 In any event --

11 MR. THRASHER: Judge --

12 ALJ STERN: -- I have got to resolve that
13 problem too, because Mr. Thrasher sat here for a couple
14 of days thinking he was representing ERC, and it really
15 wasn't ERC for him to represent.

16 MR. THRASHER: Yes, Judge.

17 ALJ STERN: So I guess you're going to file a
18 notice of withdrawal at some point in time in the next
19 day or so.

20 MR. THRASHER: Yes, Judge.

21 ALJ STERN: Aside from making an oral
22 representation. And if you want to speak with
23 Mr. Quinn, if he has Mr. Quinn's number, it's already a
24 couple hours -- I don't know what --

25 Do you have an office number or a --

1 MR. THRASHER: I just have a cell phone.

2 ALJ STERN: Well, we can try and reach him on
3 the phone. The Division's people know how to work this
4 phone. I'm not an expert on it.

5 MS. LUEDTKE: Judge, I guess it's not that
6 important if we get him on the phone.

7 ALJ STERN: Well, wait. Do you want him on the
8 phone or not?

9 MS. LUEDTKE: I mean, if we're going to let him
10 know in some way, or give him notice in some way.
11 Mr. Thrasher is representing that he does have notice of
12 this. And I'm happy to send him a certified copy of the
13 notice and answer that's been filed. I don't know that
14 I need to re-serve the entity, because that would just
15 be a statutory agent that I assume --

16 ALJ STERN: Okay. So you don't require -- I
17 mean, I believe the representations by Mr. Thrasher.

18 I'll tell you what. One possibility is --
19 something gave me a thought -- is if you wanted to talk
20 to Mr. Quinn outside of the proceeding itself, that's
21 possible too. We'll take a recess. You call him up
22 through the speaker phone on your cell phone, I guess.
23 And just so you see that he's aware of things, and then
24 we'll recess. We are set to go in February again, but
25 the problem is we've already gone through some evidence,

1 and it's going to make a real little mud puddle, to say
2 the least.

3 So do you want to do that, or do you, are you
4 willing --

5 MS. LUEDTKE: Yeah. That's fine. If we could
6 just take a little break, and maybe Bobby can give him a
7 call and we can be on a speaker phone, and I can give
8 him whatever documents he wants.

9 ALJ STERN: Okay. Why don't we do that, and I
10 will check back with you in a few minutes.

11 MS. LUEDTKE: Thank you.

12 ALJ STERN: How long do you think you'll be
13 talking, about 15 minutes?

14 MR. THRASHER: I would say five. I think all
15 we're going to do is introductions and exchange contact
16 information. And then counsel can deal directly with
17 him with regard to representation of the, and dealing
18 with the ERC entities.

19 ALJ STERN: All right. I'll check back with you
20 in a few minutes.

21 (Recess taken from 10:38 a.m. to 10:45 a.m.)

22 (Mr. Rycraft entered the proceedings.)

23 ALJ STERN: Back on the record again. So are we
24 going to continue this matter until February? And if
25 you want to have something sooner, I mean, I don't know

1 exactly what you would want, but if you want to have
2 some sort of a status conference, file a motion to set a
3 status conference, I can do that. But there is no point
4 in setting one if we don't know exactly what is going to
5 happen.

6 MS. LUEDTKE: I do want to clarify one thing for
7 the record. There's no other pending transfers of the
8 entities that -- I mean I just don't want to run -- I'm
9 not trying to be ridiculous here, but I really want to
10 make sure that this isn't going to happen with another
11 entity that's named.

12 MR. THRASHER: None that I'm aware of.

13 MS. LUEDTKE: Okay. If that's the case, I mean,
14 maybe we, I'll do that, just so that, you know, maybe in
15 November or early December Mr. Quinn can get involved
16 and bring any issues that he has to the Division's
17 attention. But he seemed to understand, and the
18 Division is going to e-mail him copies of the notice and
19 the answer and the most recent procedural order.

20 ALJ STERN: Okay. And we'll see what happens.
21 I mean, we have a lot of matters --

22 MS. LUEDTKE: I think we need to decide, maybe
23 at that time, if I need to re-put on my entire case.

24 ALJ STERN: Yeah. There's a lot of things to
25 think about here, so...

1 All right. We're going to recess. We're
2 scheduled to resume in February. I forget the exact
3 dates.

4 MR. THRASHER: The 2nd.

5 ALJ STERN: February 2nd. And it will be a
6 Monday so we would resume, probably, at 10:00 in the
7 morning.

8 In the interim, I assume you will be in contact
9 with Mr. Rycraft. I don't know -- oh, excuse me.

10 MR. RYCRAFT: I'm here.

11 ALJ STERN: You popped out of the --

12 MR. THRASHER: We've given him the Cliffs notes,
13 Judge.

14 MR. RYCRAFT: Yeah.

15 ALJ STERN: Okay. You got the Cliffs note
16 version.

17 MR. RYCRAFT: I got the Cliffs note version,
18 yeah.

19 ALJ STERN: Okay. In any event, we'll see where
20 we're at at that time and, hopefully, if we need a
21 status conference, just file something and I will
22 schedule a status conference.

23 MS. LUEDTKE: Okay.

24 ALJ STERN: All right. With that we're in
25 recess till February, until February. And I don't know

1 whether we'll end up picking up where we left off or if
2 we'll have to resume and start all over from day one.

3 Okay. We're in recess. Thank you.


4 MR. THRASHER: Thank you, Judge.

5 (The hearing recessed at 10:47 a.m.)
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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
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7 I, KAREN L. KESSLER, RPR, Certified Reporter
8 No. 50821 for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full, true
10 and accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.
13

14 WITNESS my hand this 7th day of November,
15 2013.
16
17

18 
19 _____
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21 Certified Reporter
22 Certificate No. 50821
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